

## REMARKS

The Examiner provides a number of restrictions and rejections; we list them here in the order in which they are addressed.

I. Claims 27-29, 31 and 33-35 are rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicants regard as the invention.

II. Claims 27-29, 31, 33 and 34 are rejected under 35 U.S.C. §102(e) as allegedly being anticipated by Kupper *et al.* or in the alternative under 35 U.S.C. §103(a) as allegedly being obvious in view of Kupper *et al.*

III. Claim 35 is rejected under 35 U.S.C. §103(a) as allegedly being obvious in view of Kupper *et al.*

IV. Claims 27-29, 31 and 33-35 are rejected on the grounds of non-statutory obviousness-type double patenting over claims 1-17 of U.S. Patent No. 7,206,633.

**I. Claims 27-29, 31 and 33-35 are not indefinite.**

The Examiner argues that Claim 27 is vague because it recites, “an implantable pacemaker comprising a plurality of pacing leads” rather than “an implantable pacemaker further comprising a plurality of pacing leads”. The Applicants fail to understand this distinction – indeed, the Examiner admits, “...the claim uses ‘comprising’ which further defines a previous element”. Since there is only one previous element (an implantable pacemaker) what exactly is unclear? Nonetheless, without acquiescing to the Examiner's argument but to further the prosecution, and hereby expressly reserving the right to prosecute the original (or similar) claims, Applicants have amended Claim 27 such that the transition term now recites “further comprising”. This amendment is made not to acquiesce to the Examiner's argument but only to further the Applicants' business interests, better define one embodiment and expedite the prosecution of this application.

The Examiner also argues that Claim 27 is unclear as to whether “leads configured” is meant to define the leads or the pacemaker. The Applicants believe that one having ordinary skill in the art would consider the claim clear. Nonetheless, without acquiescing to the Examiner's argument but to further the prosecution, and hereby expressly reserving the right to prosecute the original (or similar) claims, Applicants have amended Claim 27 to recite “...a plurality of atrial and ventricular leads, said atrial and ventricular leads further comprising distal tip electrodes configured to deliver...”. This amendment is made not to acquiesce to the Examiner's argument but only to further the Applicants' business interests, better define one embodiment and expedite the prosecution of this application. The Applicants have then concomitantly amended elements b) and c) of Claim 27 such that proper antecedent basis is retained by reciting, “said pacemaker” rather than “said pacemaker element”.

The Examiner also contends that the “implantable defibrillator comprising a timing device” element is vague since it is unclear if there is a defibrillator, a defibrillator and a timing device, or just a timing device. The Applicants believe that the current construction would be sufficiently clear to one having ordinary skill in the art. Nonetheless, without acquiescing to the Examiner's argument but to further the prosecution, and hereby expressly reserving the right to prosecute the original (or similar) claims, Applicants have amended Claim 27 to recite “an implantable cardiac defibrillator attached to said pacemaker” (Applicant's Specification, page 19, line 15); and “a timing device connected to said pacemaker”(Applicant's Specification, page 11, lines 20-21; page 23, lines 4-7; or page 24, lines 4-8). These amendments are made not to acquiesce to the Examiner's argument but only to further the Applicants' business interests, better define one embodiment and expedite the prosecution of this application.

Finally, the Examiner states that Claim 31 is vague since it recites “further comprising” atrial and ventricular defibrillation leads. The Applicants find this interesting because Claim 31 is intended to provide additional leads, consequently the claim is clear, even to the Examiner. Nonetheless, without acquiescing to the Examiner's argument but to further the prosecution, and hereby expressly reserving the right to prosecute the original (or similar) claims, Applicants have amended Claim 31 to recite “said atrial and ventricular leads further comprise defibrillation electrodes”. This

amendment is made not to acquiesce to the Examiner's argument but only to further the Applicants' business interests, better define one embodiment and expedite the prosecution of this application.

Support in the specification for atrial and ventricular leads which comprise both "distal tip electrodes" AND "defibrillation electrodes" may be found in Figure 1; as well as page 20, lines 7-9, 12-15 and 21-23 and page 22, lines 9-11. The Applicants further provide new Claim 36, which recites that the atrial and ventricular leads further comprise "separate conductors" (see specification, page 20, lines 21-23) as an additional example of this embodiment.

**II. Claims 27-29, 31, 33 and 34 are neither anticipated by nor obvious in view of Kupper *et al.***

The Examiner rejects Claims 27-29, 31, 33 and 34 are anticipated, or in the alternative obvious, over Kupper *et al.* The Applicants believe that the present rejection is moot based upon the above amended Claim 27 reciting an element (i.e. timing device) configured to determine the source (i.e. atria or ventricles) of the depolarization. Support for determining the origin of an earliest arriving electrical signal may be found throughout the specification, including for example: page 3, lines 5-10; page 11, lines 15-24; page 23, lines 4-21 and page 24, lines 4-8. Since this element is neither taught nor suggested by Kupper *et al.* the Applicants respectfully contend that this rejection should be withdrawn.

**III. Claim 35 is not obvious in view of Kupper *et al.***

The Examiner further alleges that Claim 35 is obvious in view of Kupper *et al.* along with official notice that IMDs use quadripolar-sensing leads. The Applicants disagree. This point is irrelevant, however, in view of the shortcomings of Kupper *et al.* detailed above. Therefore, the Applicants respectfully request that the Examiner withdraw the present rejection.

**IV. Claims 27-29, 31 and 33-35 are patentably distinct from claims 1-17 of U.S. Patent No. 7,206,633.**

The Examiner has rejected Claims 27-29 and 31-35 as allegedly being unpatentable on the grounds of non-statutory obviousness-type double patenting over claims 1-17 of U.S. Patent 7,206,603. The Applicants disagree and believe this rejection is outdated because all continuing applications now expire on the date of the first filed priority document. None-the-less the Applicants have provided a terminal disclaimer in full compliance with 37 CFR 3.73(b).

**CONCLUSION**

Based on the arguments provided above, Applicants believe that the Claims 27-29, 31 and 33-35 as well as new Claim 36 are in condition for allowance. Should the Examiner believe a telephone interview would aid in the prosecution of this application, the Applicants encourage the Examiner to call the undersigned at 781-828-9870.

Respectfully submitted,

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